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CIVIL RIGHTS, CONSTITUTIONAL LAW, INJURY & TORT LAW

Gericke v. Begin, No. 12-2326

In an action alleging that plaintiff was arrested and charged with wiretapping in retaliation for attempting to film defendant-officer as he was conducting a late-night traffic stop, the district court's order denying defendant-officers qualified immunity on plaintiff's retaliatory prosecution claim is affirmed, where, based on plaintiff's version of the facts, she was exercising a clearly established First Amendment right when she attempted to film the traffic stop in the absence of a police order to stop filming or leave the area.

CRIMINAL LAW & PROCEDURE, EVIDENCE

US v. Burdulis, No. 12-1896

Defendant's conviction of possessing child pornography in violation of 18 U.S.C. section 2252(a)(4)(B) is affirmed, where: 1) the warrant to search both defendant's home and the devices inside it did not violate the Fourth Amendment because the government had sufficient probable cause; 2) the district court correctly concluded that copying pornography onto a thumb drive is producing pornography under the statute; and 3) defendant's challenge to the admission of the drive's "Made in China" inscription fails.

CRIMINAL LAW & PROCEDURE, HABEAS CORPUS

Marshall v. Bristol Superior Court, No. 13-1965

The district court erred in granting petitioner a writ of habeas corpus barring prosecution for murder on double jeopardy grounds, where: 1) the Massachusetts Supreme Judicial Court (SJC) previously reversed petitioner's conviction for being an accessory before the fact to the same murder; 2) defendant was then indicted for murder; 3) the SJC upheld the indictment, holding that its earlier reversal had been based on a variance between the crime charged and the crime proved at trial under state law, and a second prosecution following a reversal based on such a variance does not give rise to a double jeopardy problem; 4) this court is bound by the SJC's interpretation of its earlier reversal and the requirements of Massachusetts law, so petitioner's double jeopardy argument necessarily fails; and 5) petitioner's ex post facto claim is patently without merit.

BANKRUPTCY LAW, PROPERTY LAW & REAL ESTATE

Degiacomo v. Traverse, No. 13-9002

The bankruptcy judge and Bankruptcy Appellate Panel's decisions accepting the view of the bankruptcy trustee that his power to avoid and preserve the debtor's mortgage justifies him in selling the debtor's home as property of the bankruptcy estate because the bank failed to record the mortgage with the appropriate registry, is reversed and remanded, where: 1) the debtor's home is subject to a homestead exemption under Massachusetts law; 2) in these circumstances, the bankruptcy Code would ordinarily allow the debtor to pass through bankruptcy in possession of her home; and 3) the trustee may only sell "property of the estate," and the preserved mortgage in this case carries no immediate ownership rights that might be seen to turn the debtor's home into the property of the estate.

CRIMINAL LAW & PROCEDURE, EVIDENCE

US v. Diaz-Castro, No. 12-2038

Defendant's convictions and sentence for multiple counts of conspiracy to possess with intent to distribute a controlled substance, attempt to possess with intent to distribute a controlled substance, and possession of a firearm in relation to a drug trafficking crime are affirmed, where: 1) the evidence presented at trial was more than sufficient to support the jury's verdict; 2) the district court did not err in granting the government's motion to prohibit defendant from entering certain evidence for the purpose of supporting entrapment, derivative entrapment, or duress defenses; 3) the prosecution's burden of proof comments at closing were harmless error; and 4) defendant's multiplicity of charges argument fails because no reasonable jury could find that only a single conspiracy existed, and defendant engaged in two separate drug trafficking crimes.

CIVIL RIGHTS, LABOR & EMPLOYMENT LAW

Velazquez-Perez v. Developers Diversified Realty, No. 12-2226

In an employment discrimination and retaliation action where plaintiff alleged that he was terminated after his job performance was maligned by a jilted co-worker intent on revenge, summary judgment in favor of defendant-employer is: 1) vacated in part as to the discriminatory termination claim, where the employer faces liability if the coworker acted, for discriminatory reasons, with the intent to cause the plaintiff's firing, the co-worker's actions were in fact the proximate cause of the termination, and the employer allowed the co-worker's acts to achieve their desired effect though it knew (or reasonably should have known) of the discriminatory motivation, and here, a reasonable jury applying this test could find in favor of plaintiff; but 2) otherwise affirmed.